

RNTPC Paper No. A/YL-MP/267A
For Consideration by
the Rural and New Town
Planning Committee
on 6.4.2018

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/267

- Applicant** : Hang Shun Real Estate Strategy Limited represented by R-riches Property Consultants Limited
- Site** : Lot 2905 S.C RP (Part) in D.D. 104 and Adjoining Government Land (GL), Mai Po, Yuen Long, New Territories
- Site Area** : About 531.3 m² (including about 163.5 m² of GL)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Mai Po and Fairview Park Outline Zoning Plan (OZP) No. S/YL-MP/6
- Zoning** : “Open Space” (“O”)
- Application** : Proposed Temporary Shop and Services (Real Estate Agency and Retail Store) and Ancillary Site Office for a Period of 3 years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (real estate agency and retail store) and ancillary site office for a period of 3 years at the application site (the Site) (**Plan A-1**). The Site is currently used for shop and services (real estate agency) use with valid planning permission under Application No. A/YL-MP/254 up to 23.12.2019.
- 1.2 The Site is the subject of 4 previously approved applications (Nos. A/YL-MP/77, 188, 225 and 254) (**Plan A-1**). The last Application No. A/YL-MP/254 submitted by the same applicant was approved by the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) on 9.12.2016 for a period of 3 years up to 23.12.2019. All approval conditions, including those in relation to the submission of records of the existing drainage facilities on site and the submission and implementation of fire service installations (FSIs) proposal, have been complied with.
- 1.3 According to the applicant, the real estate agency and retail store for sale of pet supplies are to serve the nearby residents. As shown on the site plan at **Plan A-2**

and **Drawings A-1 and A-2**, the Site is accessible from the south-east of the Site via a local track leading from Castle Peak Road – Mai Po. The Site has been paved and fenced off. A comparison of the major development parameters of last approved Application No. A/YL-MP/254 and the current application are as follows:

Major Development Parameters	Application No. A/YL-MP/254	Current Application No. A/YL-MP/267
Development/Use	Temporary shop and services (real estate agency) for a period of 3 years	Proposed temporary shop and services (real estate agency and retail store) and ancillary site office for a period of 3 years
Site Area	About 565m ² (including about 180m ² of GL)	About 531.3m ² (including about 163.5m ² of GL)
Total Floor Area	154 m ² (including 73.4m ² of covered walkway/porch)	379.5 m ²
Structure	<ul style="list-style-type: none"> • 4 one-storey converted containers for office, storeroom, meeting room/pantry and mobile toilet (with a height of 3m) • a signage of not exceeding 2m high 	5 two-storeys converted containers for real estate agency, retail store, storage for documents and rain shelters (with a height of 7.5m)
No. of Parking Spaces	5 (private cars)	3 (private cars)
Operation Hours	10:15a.m. to 8:00p.m. daily	9:30a.m. to 7:30p.m. daily

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application Form received on 17.11.2017 **(Appendix I)**
- (b) Further information (FI) received on 2.3.2018 providing responses to departmental comments **(Appendix Ia)**
- (c) FI received on 6.3.2018 providing clarifications vehicular trips to/from the Site and details of the canteen **(Appendix Ib)**
- (d) FI received on 13.3.2018 clarifying the nature of the retail store **(Appendix Ic)**
- (e) FI received on 21.3.2018 clarifying the ancillary use of the proposed development **(Appendix Id)**

1.5 On 12.1.2018, the Committee decided to defer making a decision on the application as requested by the applicant pending further submission from the applicant to address departmental comments. On 2.3.2018, 6.3.2018, 13.3.2018

and 21.3.2018, the applicant submitted FIs and the application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of application form at **Appendix I** and the FIs at **Appendices Ia to Id**. They can be summarized as follows:

- (a) The Site is located in the “Open Space” zone of the approved Mai Po & Fairview Park OZP No. S/YL-MP/6. The proposed development is compatible with the surrounding environment.
- (b) Three previous applications (Nos. A/YL-MP/188, A/YL-MP/225 and A/YL-MP/254) had been made by the same applicant. All approval conditions of these three applications had been complied with. Similar applications for shop and services use in the nearby area had been approved by the Committee.
- (c) The ancillary site offices are the backup offices for the proposed real estate agency and retail store.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is not a “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notice to San Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection. For the GL, the “owner’s consent/notification” requirements as set out in TPB PG-No. 31A are not applicable.

4. Town Planning Board Guidelines

According to the Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C), the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are summarised as follows:

- (a) the intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
- (b) within the WBA, for development or redevelopment which requires planning permission, an ecological impact assessment (EcoIA) would need to be submitted. Some local and minor uses (including temporary uses) are however exempted from the requirement of EcoIA.

5. Background

The Site is not a subject of any active planning enforcement action.

6. Previous Applications

6.1 The Site is the subject of 4 previous applications (Nos. A/YL-MP/77, 188, 225 and 254). Application No. A/YL-MP/77 for proposed temporary public car park (private cars) for a period of 12 months was approved by the Committee on 22.9.2000 mainly on the grounds that the proposed development could cater for the parking demand of the local residents.

6.2 Application No. A/YL-MP/188 and its renewal application Nos. A/YL-MP/225 and 254 for proposed temporary shop and services (real estate agency) were approved by the Committee on 23.12.2010, 13.12.2013 and 9.12.2016 respectively for periods of 3 years to 23.12.2013, 23.12.2016 and 23.12.2019 mainly on the grounds that approval of the application on a temporary basis would not frustrate the long term planning intention of the “O” zone; the proposed development is considered not incompatible with the surrounding land uses; and adverse environmental, traffic, fire safety, drainage and landscape impacts are not envisaged. All approval conditions under the applications had been complied with. As compared with the last approved application, the current application is for shop and services (real estate agency & retail use), slightly reduced site area, increase in total floor area and structures (as set out in paragraph 1.3).

6.3 Details of these applications are summarized at **Appendix II**. Their locations are shown on **Plan A-1**.

7. Similar Applications

7.1 Since 2007, within the same “O” zone on the OZP, there are 15 similar applications for similar temporary shop and services/sale office uses. All the applications were approved by the Committee mainly on consideration that the developments were not incompatible with the surrounding land uses and the concerns of Government departments could be addressed by imposing approval conditions.

7.2 Details of these 15 applications are summarized at **Appendix III**. Their locations are shown on **Plan A-1**.

8. The Site and Its Surrounding Areas (Plans A-1 to A-4b)

8.1 The Site is:

- (a) accessible at the south-east of the Site via a local track leading from Castle Peak Road – Mai Po;

- (b) paved and fenced off;
- (c) currently used for shop and services (real estate agency) use under planning permission (No. A/YL-MP/254) with validity up to 23.12.2019; and
- (d) located within the WBA of Deep Bay.

8.2 The surrounding land uses are a mix of residential development (Royal Palms), domestic dwellings/structures, storage yards, plant nurseries and vacant land. Some storage yards are suspected unauthorized developments subject to enforcement action by the Planning Authority:

- (a) to its immediate north is open storage yards for timber/vehicles, storage area, plant nursery, and some domestic structures;
- (b) to its immediate west is unused land; and further west across Palm Canyon Drive is a residential development, Royal Palms;
- (c) to its immediate south are open storage yard for construction machinery and material, plant nursery and pond; and
- (d) to its immediate east are Castle Peak Road - Mai Po, San Tin Highway and San Tam Road, across which are residential development of Casa Paradizo.

9. **Planning Intention**

The “O” zone is intended primarily for the provision of outdoor open-air space for active and/or passive recreational uses serving the needs of local residents as well as the general public.

10. **Comments from Relevant Government Departments**

10.1 The following Government departments have been consulted and their views on the application and public comments are summarised as follows:

Land Administration

10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.

- (b) The private land of Lot No. 2905 S.C RP in D.D. 104 is covered by Short Term Waiver (STW) No. 3471 to permit structures for the purpose of “Shop and Services (Real Estate Agency)”.
- (c) The GL of the Site is covered by Short Term Tenancy (STT) No. 2563 for the purpose of “Ancillary Car-parking to Shop and Services (Real Estate Agency)”.
- (d) The Site is accessible to Castle Peak Road – Mai Po through GL. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way.
- (e) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (f) Should planning approval be given to the planning application, the STT and STW holder will need to apply to his office for modification of the STT and STW conditions if there is any irregularity on site. Such application will be considered by the LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including among other the payment of premium or fee, as may be imposed by LandsD.

Environment

10.1.2 Comment of the Director of Environmental Protection (DEP):

He understands that the proposed development is located within the WBA under TPB PG-No. 12C. Based on the information provided by the applicant and the proposed use, he does not have any comments on the application.

Nature Conservation

10.1.3 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

Noting that the application involves continuation of the similar use which was approved previously, he has no comment on the application from nature conservation point of view and does not require the submission of an EcoIA.

Traffic

10.1.4 Comments of the Commissioner for Transport (C for T):

- (a) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be clarified with LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance accordingly.
- (b) Should the application be approved, the following conditions should be incorporated:
 - (i) Only private car is allowed to enter/park at the Site at all times during the planning approval period; and
 - (ii) No vehicle is allowed to queue back to or reverse onto/from public road at all times during the planning approval period.

10.1.5 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) He has no comment on the application from highway maintenance point of view. The approval conditions for the last Application No. A/YL-MP/254 should remain valid.
- (b) The applicant should note that HyD is not/shall not be responsible for the maintenance of any existing vehicular access connecting the Site and Castle Peak Road – Mai Po.

10.1.6 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD2-2, RDO, HyD):

The Site neither falls within any administrative route protection boundary, gazetted railway schemes, nor railway protection boundary of heavy rail systems. As such, he has no comment on the application from railway development viewpoint.

Fire Safety

10.1.7 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the proposal subject to FSIs being provided to the satisfaction of the D of FS.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to D of FS for approval. The applicant should also be advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and

- (ii) the location of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Buildings Matters

10.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) As there is no record of approval by the Building Authority (BA) for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated of any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
- (d) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (f) If the proposed use under application is subject to issue of a license, the applicant should be reminded that any existing structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.

- (g) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Drainage

10.1.9 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

Noting that the applicant would maintain the same drainage facilities as those implemented under previous Application No. A/YL-MP/254, he has no objection in principle to the proposed development. Should the Board consider that the application is acceptable from planning point of view, he would suggest that the following conditions should be stipulated in the approval letter:

- (i) the maintenance of the existing drainage facilities implemented under Application No. A/YL-MP/254; and
- (ii) the submission of records of the existing drainage facilities on site to the satisfaction of the Director of Drainage Services or of the Board.

Open Space Provision

10.1.10 Comments of the Director of Leisure and Cultural Services (DLCS):

- (a) He notes the application period is only three years and he has no in-principle objection to the application.
- (b) The Site is not on the priority list for development agreed by the Yuen Long District Council. He has no plan to develop the Site into public open space at present.

Landscaping

10.1.11 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) He has no objection to the application.
- (b) The Site was the subject of 4 previous applications of the same use in which he had no objection from the landscape planning perspective. According to the aerial photo dated 4.4.2017, there is no significant change to the surrounding landscape setting since the application was last approved (application no. A/YL-MP/254). According to his site inspection taken on 5.7.2017, existing trees in good condition are found within the Site. Further adverse landscape impact due to the continued use of the Site is not anticipated.

- (c) Should the Board approve the application, he would suggest imposing a landscape condition requiring the existing landscape planting within the Site should be maintained in healthy condition throughout the planning approval period.

Others

10.1.12 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) If any Food and Environmental Hygiene Department (FEHD)'s facility is affected by the development, FEHD's prior consent must be obtained. Reprovisioning of the affected facilities by the project proponent up to the satisfaction of FEHD may be required. Besides, the project proponent should provide sufficient amount of additional recurrent cost for management and maintenance of the reprovisioned facilities to FEHD.
- (b) If provision of cleansing service for new roads, streets, cycle tracks, footpaths, paved areas etc, is required, FEHD should be separately consulted. Prior consent from FEHD must be obtained and sufficient amount of recurrent cost must be provided to him.
- (c) Proper licence/ permit issued by his Department is required if there is any food business/ catering service/ activities regulated by the DFEH under the Public Health and Municipal services Ordinance (Cap.132) and other relevant legislation for the public and the operation of any business should not cause any obstruction.
- (d) If the proposal involves any commercial/trading activities, no environmental nuisance should be generated to the surroundings. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/ at their expenses.

District Officer's Comments

10.1.13 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

His office has no comment on the application and the local comments should be submitted to the Board directly, if any.

10.2 The following Government departments have no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);

- (c) Project Manager (West), Civil Engineering and Development Department (PM(W) CEDD);
- (d) Director of Electrical and Mechanical Services (DEMS); and
- (e) Commissioner of Police (C of P).

11. Public Comments Received During Statutory Publication Period

On 24.11.2017, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 15.12.2017, one objecting public comment was received (**Appendix IV**) from a private individual raising concern that local residents cannot enjoy the use of this “O” zone which has been used for parking and other uses since 2000.

12. Planning Considerations and Assessments

- 12.1 The Site falls within “O” zone which is intended for the provision of outdoor open-air space for active and/or passive recreational uses serving the needs of local residents as well as the general public. Although the shop and services (real estate agency and retail store) and ancillary site office use is not in line with the planning intention of the “O” zone, approval of the application on a temporary basis for a period of 3 years would not frustrate the long term planning intention of the “O” zone as there is no development programme for implementing the proposed open space, as advised by DLCS.
- 12.2 According to the applicant, the proposed shop and services (real estate agency and retail store) and ancillary site office use is to serve the residential neighbourhood and local community. It is considered not incompatible with the surrounding land uses which comprise a mix of residential developments, domestic dwellings, storage yards, plant nurseries and vacant land.
- 12.3 Although the Site falls within the WBA of the TPB PG-No. 12C, the guidelines also specify that planning applications for temporary uses are exempted from the requirement of EcoIA. DAFC has no comment on the application from nature conservation point of view and does not require the submission of an EcoIA.
- 12.4 Other concerned Government departments including DEP, C for T, D of FS, CE/MN, DSD and CTP/UD&L, PlanD have no objection to or adverse comment on environmental, traffic, fire safety, drainage and landscape aspects respectively. Their technical requirements could be addressed by approval conditions in paragraphs 13.2 (g) to (i) below. Approval conditions restricting the operation hours, restricting only private car to enter/park and no vehicle to queue back or reverse onto/from public road, and requiring maintenance of paving, boundary fencing, landscape planting and existing drainage facilities are recommended in paragraphs 13.2 (a) to (f) below to minimize any potential environmental nuisance to nearby residents. Non-compliance with any of the

approval conditions would result in revocation of the planning permission and unauthorized development on-site would be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to follow the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize the possible environmental impacts.

- 12.5 The Site is the subject of 4 previous approved applications for which 3 are for similar real estate agency use. The last application No. A/YL-MP/254 for temporary shop and services (real estate agency) use was approved on 9.12.2016 and the planning permission is valid until 23.12.2019, and all approval conditions have been complied with. Since 2007, the Committee has approved a total of 15 applications for temporary shop and services uses relating to real estate agency, sale office, furniture showroom, florist and gardening shop, and metal hardware shop and household item retail store within the same “O” zone. Approval of the current application is in line with the previous decisions of the Committee.
- 12.6 There is one objecting public comment raising concerns on the use of “O” site for other uses. In this regard, DLCS has no objection to the application as there is no development programme for implementing the proposed open space at present. The planning consideration and assessments above area also relevant.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comment mentioned in paragraph 11, the Planning Department considers that the temporary shop and services (real estate agency and retail store) and ancillary site office could be tolerated for a period of 3 years.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 6.4.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 7:30p.m. and 9:30a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) only private car is allowed to enter/park at the Site at all times during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at all times during the planning approval period
- (d) the maintenance of paving and boundary fencing on the Site at all times during the planning approval period;
- (e) the maintenance of landscape planting on the Site at all times during the

planning approval period;

- (f) the maintenance of existing drainage facilities on the Site at all times during the planning approval period;
- (g) the submission of records of the existing drainage facilities on Site within **3** months to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.7.2018;
- (h) the submission of fire service installations proposal within **6** months to the satisfaction of Director of Fire Services or of the Town Planning Board by 6.10.2018;
- (i) in relation to (h) above, the implementation of fire service installations proposal within **9** months to the satisfaction of Director of Fire Services or of the Town Planning Board by 6.1.2019;
- (j) if any of the above planning conditions (a), (b), (c), (d), (e) or (f) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (k) if any of the above planning conditions (g), (h) or (i) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (l) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix V**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the "Open Space" zone is intended primarily for the provision of outdoor open-air space for active and/or passive recreational uses serving the needs of local residents as well as the general public. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to

consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form received on 17.11.2017
Appendix Ia	FI received on 2.3.2018 providing responses to departmental comments
Appendix Ib	FI received on 6.3.2018 providing clarifications vehicular trips to/from the Site and details of the site canteen
Appendix Ic	FI received on 13.3.2018 clarifying the nature of the retail store
Appendix Id	FI received on 21.3.2018 clarifying the ancillary use of the proposed development
Appendix II	Previous applications covering the Site
Appendix III	Similar applications within “Open Space” zone on the approved Mai Po and Fairview Park OZP No. S/YL-MP/6
Appendix IV	Public comment received during statutory publication period
Appendix V	Recommended advisory clauses
Drawing A-1	Layout Plan submitted by the applicant
Drawing A-2	Plan showing the ingress/egress of the Site and the access route from Castle Peak Road – Mai Po
Plan A-1	Location Plan and Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4	Site Photos